

STATELINE

SPECIAL
REPORT

THE TOBACCO INSTITUTE
STATE ACTIVITIES DIVISION

December 8, 1988

TRENDS & HIGHLIGHTS OF THE 1988 STATE & LOCAL LEGISLATIVE YEAR

A Special Year-End Report to the
Tobacco Institute Executive Committee

The State Activities Division's field staff and legislative counsel faced nearly 600 pieces of state tobacco legislation and more than 335 local anti-tobacco proposals in 1988. While some of these measures are still pending in state legislatures -- in Michigan, New Jersey, New York and Ohio -- and at the local level, it is clear that anti-tobacco challenges were met by the industry with a high degree of success in 1988. It is also clear that 1989 will be an intense year for the industry in fighting adverse legislation.

Among the highlights of the industry's 1988 legislative year and the forces which will shape 1989:

- The traditional election-year reluctance to raise broad-based taxes focused revenue-minded legislators' attention on tobacco and other "sin taxes." Nonetheless, 1988 produced the lowest number of state cigarette tax increases since 1980. It is unlikely, however, that the industry will achieve this level of success in fighting tobacco taxes in 1989.
- The record-high 25-cent cigarette tax increase, and the "proportionate" tax on other tobacco products adopted in California Proposition 99, may set a new benchmark for tobacco tax proposals, much as the scheduled 8-cent sunset of the Federal excise tax opened a new range for state cigarette tax hikes in 1985.
- Legislation to ban smoking entirely in workplaces and public areas, rather than to restrict it to designated areas, continued to gain consideration in state and local arenas; such bans generally were rejected in all but limited areas, such as state or county office buildings.
- Congressional debates over tobacco advertising, the U.S. Surgeon General's report on "addiction" and increasing concern over youth smoking combined to prompt a growing number of state and local proposals to ban or limit advertising, sampling and sales through vending machines. Such measures were generally unsuccessful at the state level.
- While Congress saw introduction of legislation to set standards or to further investigate the "fire-safe" cigarette issue, state activity was confined to only a handful of states; no state passed legislation mandating that cigarettes be "self-extinguishing." State activity on this issue in 1989 will again be closely tied to action in Congress.
- The exportation of California's "Safe Drinking Water & Toxics Enforcement Act" to a half-dozen states produced no victories for environmentalists, but may have laid the groundwork for future consideration of such measures. Inclusion of environmental tobacco smoke and smokeless tobacco under warning provisions of California Proposition 65, and subsequent legal action regarding cigars and pipe tobacco, may draw anti-tobacco forces' attention to using this means of attacking the industry.

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- Legislation and policies discriminating against smokers in hiring for government employment received increasing media publicity and local legislative consideration after a Massachusetts state law took effect, prohibiting the hiring of tobacco-users for public safety jobs ranging from jail guards to firefighters.
- Solid waste disposal problems have prompted state and local legislation aimed at prohibiting the use of nondegradable packaging materials or imposing taxes on such packaging to fund recycling and disposal programs.
- The Rocky Mountain Governors' Tobacco-Free Challenge put eight state administrations on record in support of punitive tobacco taxes, smoking bans and limits on tobacco product promotional activities.
- This year saw the first statewide anti-tobacco ballot initiatives since 1981. Although two of the three measures on November state ballots were rejected, and two other proposed initiatives never qualified, it is likely that the citizen initiative process will be used more frequently to attack the industry.
- A meeting of national voluntary health associations is to be held in January 1989 to plan state and federal strategy on tobacco issues; the American Cancer Society hopes to export California Proposition 99's punitive tobacco taxes to other states, particularly those states which utilize the citizen initiative.
- The 25th anniversary edition of the U.S. Surgeon General's report on smoking will be released in mid-January 1989, offering a potential blue-print for state and local legislation on the full range of anti-tobacco issues.

These and other pressures are reflected in the industry's record of state and local legislative achievement for 1988, and will set the scene for even greater challenges in 1989.

Taxes

Of the 27 states considering cigarette excises in 1988, increases have been approved by only two legislatures, Iowa and Rhode Island, and by ballot initiative in California. Massachusetts did not alter its tobacco excise but repealed the sales tax exemption previously allowed cigarettes and other tobacco products. Cigarette tax legislation is still pending in four states: Michigan, New Jersey, New York and Ohio.

This year, Rhode Island raised its cigarette tax by 2 cents per pack; Iowa hiked its rate by 3 cents, but provided for a 3-cent sunset in 1989; California voters passed a 25-cent cigarette tax increase. Other cigarette tax proposals ranged from a low half-cent per pack in Pennsylvania to a high of 50-cents per pack in California legislation. Outside California, cigarette tax hikes were proposed through the initiative process in Colorado, where a 20-cent increase failed to qualify for the ballot, and Oregon, where voters rejected a penny-per-pack cigarette tax hike and a penny-per-can increase in the beer tax. Minnesota continues to have the highest cigarette excise in the nation, 38 cents, now followed by California, 35 cents, and Iowa, 34 cents per pack.

New or higher taxes on tobacco products other than cigarettes were considered in 20 states, but passed in only two legislatures, Alaska and Iowa, and in California Proposition 99. OTP tax measures remain pending in Michigan, New Jersey and New York.

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At the local level, an unusually high number of cities and counties raised tobacco taxes in 1988. Alabama counties were driven by the desire to stake out a "piece of the pie" in anticipation of eventual passage of a tax "levelization" measure, repealing local tobacco taxes in exchange for an allocation from an increased state excise; that measure did not pass in 1988, but similar legislation is expected to be considered in 1989. Budget pressures for localities in Illinois, Missouri, and Virginia have led local lawmakers to target cigarette and OTP taxes for quick revenue: a proposal to double the local New Orleans, LA, tobacco tax was defeated; state legislation is pending to authorize New York City to increase its local cigarette tax. The Evanston, IL, City Council, however, was convinced by evidence that the town's high local cigarette tax was driving business to neighboring suburbs and voted to reduce the local excise from 15 to 10 cents per pack.

The motivation for extremely high tobacco tax increases was clearly punitive in a number of states, such as California, but fiscal stress in an election year also drew attention to "sin taxes" in such states as Iowa. Budget pressures are expected to increase for a number of states in 1989, including Louisiana, Massachusetts, New York and North Dakota, while extreme anti-tobacco sentiment may drive punitive tax measures in such states as Minnesota, Oregon and Wisconsin. Altogether, the industry expects cigarette tax legislation to be proposed in 35 to 44 states in 1989. OTP tax measures in 29 to 42 states.

Smoking Restrictions

After a record number of smoking restriction measures were passed in 1987, legislative activity on this issue was generally less intense in 1988. While smoking bills were considered in 39 states this year, only six states passed significant legislation this year. Pennsylvania adopted smoking policy requirements affecting workplaces, restaurants and public places; the other states generally focused on tightening existing smoking laws. Proposals are still pending in New Jersey, New York and Ohio.

The solid rejection by Oregon voters of an initiative to prohibit smoking in virtually all workplaces and places open to the public drew nationwide attention and may help to solidify opposition to such sweeping proposals. The Connecticut legislature came close to passing a bill reinstating smoking cars on commuter train lines after the New York Metropolitan Transportation Authority banned all smoking on the Metro North and Long Island Rail Road lines; the legislation is likely to be reintroduced in 1989. The Chicago Regional Transportation Authority rejected a proposal to ban all smoking on its commuter trains.

After the New York City Council approved a stringent smoking ordinance in late 1987, the city's Commissioner of Health promulgated rules for its implementation. A particularly controversial element of these regulations is a requirement that signs be posted in areas where smoking is allowed reading: "Warning: Smoking, and Breathing Second-Hand Smoke, is Dangerous to Health."

Major local anti-smoking activity is no longer confined to the traditional states of California, Colorado and Massachusetts; numerous cities and counties in Illinois, Maryland, New York and Texas are considering workplace and public smoking measures. More than 100 localities have adopted smoking ordinances thus far in 1988; these measures range from voluntary policies in Montrose, CO, and Waynesboro, VA, to tough workplace restrictions in San Diego County, CA, and New Orleans, LA. A growing number of city and county governments in southeastern states, such as Georgia, North Carolina, South Carolina and Tennessee, have considered restrictions on smoking in publicly-owned buildings.

Local restriction ordinances have been preempted by a Pennsylvania law enacted this year; Florida and Oklahoma have previously preempted local regulation of public smoking. Workplace smoking restrictions were repealed in Aurora, CO, and similar effort is underway in Brownsville, TX.

In 1989, the industry is preparing to fight smoking restriction bills in 42 to 45 state legislatures; the number of local anti-smoking proposals is expected to continue to grow.

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Sampling, Advertising & Sales Restrictions

No state enacted a ban on tobacco product advertising or sampling in 1988, although such proposals were considered in 18 legislatures. Two states, California and Louisiana, prohibited sampling to minors. Legislation to ban or restrict sales through vending machines was considered in 11 states; Alaska and Wisconsin adopted restrictions on the location of tobacco vending machines.

Local proposals to limit the sale or promotion of tobacco products received a boost from the U.S. Surgeon General's report issued in mid-year, which included a foreword urging such action, and adoption of a National Association of Counties resolution calling for consideration of such measures. Three major cities, San Francisco, CA, Cincinnati, OH, and Austin, TX, banned tobacco product sampling this year; Lake City, FL, prohibited sampling near schools and centers of youth activities.

Limits on placement of tobacco vending machines were adopted in four cities and counties. Only one locality acted to restrict advertising of tobacco products: the Washington, DC, Metropolitan Area Transportation Authority rejected a total ban on tobacco advertising in the subway system, but voted to limit it to no more than 30 percent of total advertising revenue.

Passage of a new Canadian law with severe restrictions on tobacco advertising and promotion, including limits on brand-name sponsorship of music or sporting events, could have an impact on state legislative consideration of these issues, particularly in the northern tier of states. The Utah Department of Health is drafting 1989 legislation to expand existing state laws on sampling and sales as its contribution to the Rocky Mountain Governors' Tobacco-Free Challenge. The industry can expect introduction of sampling, advertising or sales restriction measures in 21 to 36 states in 1989.

"Fire-Safe" Cigarette

Despite the late-1987 efforts of anti-tobacco activists who announced introduction of "fire-safe" cigarette legislation even before the recommendations of the federal Interagency Committee on Cigarette and Little Cigar Fire Safety were sent to Congress, such measures were introduced in only five states in 1988. Bills in California, Illinois and Massachusetts died without serious consideration; New York legislation is pending, but is not expected to move in the remainder of this session.

In Minnesota, however, a requirement that cigarettes meet unspecified "fire safety" standards was passed by the State Senate; the bill was never reported from conference committee. The legislature did adopt, as part of the higher education appropriations bill, language directing the University of Minnesota to request funding for a study of the "fire-safe" issue in its 1989 budget request.

State legislatures are expected to continue to watch Congressional action on this issue closely; bills with "fire-safe" cigarette requirements are likely to be introduced in eight to 14 states in the upcoming year.

Other Major Tobacco Issues

Regulations implementing the California Safe Drinking Water and Toxics Enforcement Act, a citizen initiative adopted by state voters in 1986 as Proposition 65, now include environmental tobacco smoke and smokeless tobacco products under exposure warning requirements; these regulations take effect in April 1989. The cigar and pipe tobacco industries have agreed to place "warnings" on their products in 1989 in compliance with the Act.

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State legislation mimicing Proposition 65 appeared in seven states this year; no state bill was given serious consideration, but environmentalists and others are likely to continue to export this sweeping approach to regulation of toxic and hazardous substances.

As an outgrowth of consideration of this issue, legislation was introduced in Louisiana to create "a cause of action against the manufacturer of a tobacco product...for the recovery of expenses incurred by the state in providing medical treatment for lung cancer for any person who contracted that cancer as a result of use of the tobacco product." This measure was reported from policy committee but was defeated on the House floor. Similar cigarette manufacturer liability language was proposed in Wisconsin this year; it, too, was defeated.

Such proposals to create special liability provisions for the tobacco industry have also been introduced in previous years in Illinois and Rhode Island; the industry may anticipate this legislation to be discussed in 1989 in other states where anti-tobacco sentiment is high, including Iowa, Massachusetts and Minnesota.

State and local concern over solid waste disposal problems has prompted a variety of proposed legislation at both levels of government, ranging from bans on specific packaging materials, such as fast-food "clamshells" or plastic bags (enacted recently in Berkeley, CA, and Suffolk County, NY) to bans on all nonrecyclable or nondegradable packaging materials, as well as proposals to levy taxes on manufacturers of "litter-producing" items or to impose per-product or per-container taxes to finance disposal and recycling programs.

Packaging tax or restriction legislation of potential concern to the industry was introduced in ten states in 1988; only one measure was enacted. A comprehensive Florida solid waste law includes a provision imposing a one-cent "advance disposal fee" on packaging in 1992 if certain recycling goals are not met; the tax would double in 1995 if that goal is still unmet.

The solid waste issue is the subject of task force studies in a number of states and by the National Association of Counties. The industry may be required to address packaging tax and restriction legislation in a dozen or more states in 1989.

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